


UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>**MEDIATION QUESTIONNAIRE**

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	No. 13-17449		
District Court/Agency Case Number(s):	D.C. No. 4:11-cv-02970-PJH		
District Court/Agency Location:	U.S. District Court for Northern California, Oakland		
Case Name:	DAVISON DESIGN & DEVELOPMENT, INC., 	v.	CATHY RILEY
If District Court, docket entry number(s) of order(s) appealed from:	138, 149, 157, 171, 188, 197, 212, 217		
Name of party/parties submitting this form:	Cathy Riley		

Please briefly describe the dispute that gave rise to this lawsuit.

Plaintiffs sent unsolicited commercial email to Defendant Riley. She wrote a demand letter pointing out that the email messages were in violation of California law. Plaintiffs then filed the instant action seeking declaratory relief in the form of an order stating that the email messages did not violate California law. Riley counter-claimed for damages under California Business & Professions Code Section 17529.5.

Briefly describe the result below and the main issues on appeal.

The District Court dismissed most of Riley's counterclaims for failure to plead reliance and damages. The Court dismissed the rest of Riley's counterclaims for failure to prove reliance. The Court declined to exercise jurisdiction over the declaratory relief action.

Describe any proceedings remaining below or any related proceedings in other tribunals.

The Plaintiffs in the instant action (or some of them) have filed a similar declaratory relief action titled XL Marketing Corp. et al v. Kirby, Case No. 4:11-cv-05107-PJH (N.D.Cal.). There is also an action where the Spire Vision plaintiffs are named defendants in an action regarding unsolicited commercial email, titled Wagner v. Digital Publishing Corporation et al 3:13-cv-04952-WHA (N.D.Cal.).

Provide any other thoughts you would like to bring to the attention of the mediator.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached

☒ (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list

☒ may result in sanctions, including dismissal of the appeal.

Signature

s/ Timothy Walton

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

Cathy Riley

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **To file this form electronically** in Appellate ECF, complete the form, and then print the filled-in form to PDF (File > Print > PDF Printer/Creator). Then log into Appellate ECF and choose Forms/Notices/Disclosure > File a Mediation Questionnaire.

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Assigned: 06/23/2012

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(Plaintiff)

ConnectionCentrals
(Counter-defendant)

ConnectionCentrals
(Plaintiff)

**Davison Design & Development
Inc.**
(Counter-defendant)

**Davison Design & Development
Inc.**
(Plaintiff)

MediActivate, LLC
(Counter-defendant)

MediActivate, LLC
(Plaintiff)

ProAdvertisers, LLC
(Counter-defendant)

ProAdvertisers, LLC
(Plaintiff)

Spire Vision Holdings, Inc.
(Counter-defendant)

Spire Vision Holdings, Inc.
(Plaintiff)

XL Marketing Corp.
(Counter-defendant)

XL Marketing Corp.
(Plaintiff)

Caivis Acquisition Corp. II
(Counter-defendant)

Caivis Acquisition Corp. III
(Counter-defendant)

Digital Publishing Corp.
(Counter-defendant)

SilverInteractive
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Spire Vision LLC
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(Cross-defendant)

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(Plaintiff)

XL Marketing Corp.
(Plaintiff)

**Davison Design & Development
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(Plaintiff)

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Digital Publishing Corp.
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**Davison Design & Development
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(Plaintiff)

MediActivate, LLC
(Counter-defendant)

MediActivate, LLC
(Plaintiff)

Prime Advertisers, LLC
(Counter-defendant)

Prime Advertisers, LLC
(Plaintiff)

ProAdvertisers, LLC
(Counter-defendant)

ProAdvertisers, LLC
(Plaintiff)

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(Counter-defendant)

Spire Vision Holdings, Inc.
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